Supreme Court, U.S.
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No. 79-1069

IN THE
Supreme Court of the United States
October Term, 1979

RONCI MANUFACTURING CO., INC.,
Petitioner

v.

STATE OF RHODE ISLAND *ET AL.*

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF RHODE ISLAND

PETITIONER'S REPLY

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1. Though the State in eminent domain took only part of a single tract of petitioner's land, subjecting petitioner's remaining portion to a new tort liability created by the partial taking, respondent argues that no "severance damages" exist. Respondent asserts (Br. Opp. pp. 2, 4) this is so because the State took only what petitioner had and petitioner "at the time of condemnation, had no claim for damages against the operator of the Ashton dams" [located on the portion petitioner retains].

To be sure, before the condemnation petitioner could not have committed a tort against itself. (The same would have been true of petitioner's predecessor in interest, whom respondent likewise refers to (Br. Opp. p. 3)). But the mere fact that petitioner had no "claim for damages"

against itself – a fact stemming from petitioner's pre-condemnation ownership of a single tract of land containing the condemned portion and also the remaining portion with the Ashton dams – obviously does not show that no "severance damages" exist. When the State took part of petitioner's land, it inflicted severance damages (statutorily-imposed tort liability) upon the remaining portion. It was the State's act of eminent domain – not some prior event – which imposed the liability and inflicted the damage.

2. Respondent also argues (Br. Opp. pp. 2, 3, 4) that the existence of severance damages is speculative, since "[t]here was no showing in the present case that the State had or had attempted to make a claim in tort against the petitioner for damages."* One would hardly expect the State to have asserted any such claim while this suit is still pending. But in any event, respondent's argument misconceives the controlling legal standard for measuring just

*We also note respondent's unwarranted contention (Br. Opp. p. 4) that "The lower court found that the severance damages to the remaining property claimed by the petitioner were not justified even if its theory of the destruction of its right to continue the operation of the dam was acceptable." What the State Superior Court actually held, in the alternative, was that even if petitioner's flowage rights over the condemned "parcel 4" had been extinguished by eminent domain, petitioner would be entitled *only to an additional $31,178* as compensastion for the cost of removing the dams, silt, and debris, instead of the more than $400,000 sought by petitioner on the theory that its integrated water system was worth that much. (Petition, A54). This is a far cry from petitioner's claim (Br. Opp. pp. 2, 3, 4) that no "severance damages" were shown or proved as a factual matter. More importantly, petitioner contended in the Supreme Court of Rhode Island that, on the record, the Superior Court's $31,178 figure was hopelessly inadequate; and this question has not yet been passed upon by the Supreme Court of Rhode Island because, by virtue of the totally erroneous constitutional standard it applied to deny severance damages, this question was not reached.

compensation in eminent domain cases. What is significant for just compensation purposes is that the imposition of tort liability – the fact that the State has a claim for damages against petitioner – causes highly adverse impact on the *reasonable market value* of petitioner's remaining portion. *See generally* Orgell, Eminent Domain §§59-60 (2d ed. 1953). Having by its exercise of eminent domain imposed this tort liability on petitioner, the State under applicable constitutional principles should be required to pay just compensation for doing so.

Thus, as our petition shows, the case has important constitutional dimensions. Petitioner is not asking this Court to fix the amount of just compensation due. What petitioner asks is that this Court correct the serious constitutional error committed by the Supreme Court of Rhode Island, and remand the case to the Rhode Island courts for determination of damages in the light of the correct constitutional standards which they have so manifestly disregarded.

For the foregoing reasons, and those stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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